

## EXAMPLE 2.—“PURE ENTITLEMENTS” REPORTING AND PAYING—Continued

Property	Allocated volume per commingling approval (Mcf)	Lessee	Ownership percentage	Entitled share of allocated volume (Mcf)	Sales by lessee (Mcf)	Volume on which royalty paid to MMS (entitlements) (Mcf)
100-percent Federal Unit or Communitization Agreement (2 lessees).	50,000	C .....	75	37,500	30,000	37,500
State Lease .....	25,000	D .....	25	12,500	23,000	12,500
		.....	.....	25,000	27,000	0
Totals .....	100,000	.....	.....	100,000	100,000	75,000

Reporting on a “pure entitlements” basis ensures that the Federal Government is made whole with respect to royalties but would not allow for initial reporting and payment based on takes if production is commingled

before the royalty measurement point. Under this methodology, MMS would be made whole each month because lessees would report and pay on their entitled volume each month, even if a particular lessee (lessee B in this

example) took no production. Therefore, an adjustment to the entitled volume, as discussed above for Example 1, would not be necessary.

## EXAMPLE 3.—“PROPORTIONATE TAKES” REPORTING AND PAYING

Property	Allocated volume per commingling approval (Mcf)	Lessee	Ownership percentage	Entitled share of allocated volume (Mcf)	Sales by lessee (Mcf)	Volume on which royalty paid to MMS (proportionate takes) (Mcf)
Federal Lease (2 lessees) .....	25,000	A .....	50	12,500	20,000	25,000
		B .....	50	12,500	0	0
100-percent Federal Unit or Communitization Agreement (2 lessees).	50,000	C .....	75	37,500	30,000	28,302
State Lease .....	25,000	D .....	25	12,500	23,000	21,698
		.....	.....	25,000	27,000	0
Totals .....	100,000	.....	.....	100,000	100,000	75,000

This methodology would combine takes and entitlements by requiring lessees to report and pay on volumes equal to the sales by the lessee divided by the total sales for the property times the allocated volume under the commingling approval for the property. Consider lessees C and D: In this example, lessee C would report and pay on 28,302 Mcf, even though it actually took 30,000 Mcf, and its entitled volume is 37,500 Mcf. The 28,302 Mcf is computed as follows:

$(30,000 \text{ Mcf} / 53,000 \text{ Mcf}) \times 50,000 \text{ Mcf} = 28,302 \text{ Mcf}$  for lessee C, where 53,000 Mcf (total sales for the property) is the sum of 30,000 Mcf (lessee C's total sales) and 23,000 Mcf (lessee D's total sales), and 50,000 Mcf is the allocated volume under the commingling approval for the property. Lessee D's initial reporting and payment would be computed similarly.

Considering lessees A and B: If a lessee took no production (lessee B in this example), it would not have to pay any royalty. However, a lessee (lessee A in this example) could pay royalty on a volume greater than either its actual takes or its entitled share. Under this methodology, MMS would be made whole each month because it would

receive royalty based on the total Federal production subject to the commingling approval each month. Therefore, an adjustment to the entitled volume, as discussed above for Example 1, would not be necessary. In Example 3, lessees would have to adjust their payments among themselves.

As explained above, in instances where a lessee pays on “Pure Entitlements” such as Example 2, or “Proportionate Takes” such as Example 3, the lessee may take production that is more or less than its entitled share. In that case, a lessee would need to value its entitled share. The MMS believes that the best means of valuing the entitled share is to apply a volume weighted average of the royalty values to the volumes actually taken to the entitled share volumes undertaken. The MMS requests comments on any other alternatives for valuing such volumes.

In addition, MMS is interested in receiving comments on these three examples describing alternative methodologies. The MMS is also interested in receiving comments on any other alternative methodologies. If you propose a methodology different from those discussed above, please use our example criteria and explain why you

believe your methodology is the best alternative. In addition, MMS would like your input on how the various methodologies would affect your business practices, bookkeeping, etc.

Dated: March 22, 2006.

**R.M. “Johnnie” Burton,**

*Acting Assistant Secretary for Land and Minerals Management.*

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 7

## RIN 1024-AD45

## Dry Tortugas National Park-Special Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed Rule.

**SUMMARY:** The proposed rulemaking establishes special regulations for Dry Tortugas National Park. The proposed rule implements the act which established Dry Tortugas National Park and abolished Fort Jefferson National

Monument. This proposed rule also implements provisions for visitor use and resource protection identified in the 2000 Final General Management Plan Amendment/Environmental Impact Statement for Dry Tortugas National Park, and the July 27, 2001 Record of Decision. This rulemaking complies with legislative mandates for protection of park resources in a unique and predominantly pristine ecosystem, and provides consistency with State fishing rules. This proposed rule would: (1) Remove obsolete regulations established for Fort Jefferson National Monument; (2) protect, monitor, and study the region's recognized importance to fisheries habitats by limiting the area, extent, and methods of recreational fishing within portions of the park's boundaries by implementing a Research Natural Area (RNA); (3) clarify the authority of the superintendent to regulate fishing, boating, and permitted activities, specifically in established management zones including the RNA; and establish a permit system for research and recreational users; (4) strengthen protection of nationally significant coral reef and other marine resources by regulating vessel operation, anchoring and human activity; (5) provide enhanced protection for shipwrecks consistent with state and federal law; and (6) provide for greater protection of water quality by restricting discharges into the water of the park. Definitions have also been added to clarify terminology.

**DATES:** Comments must be received by June 6, 2006.

**ADDRESSES:** You may submit comments, identified by the number RIN 1024-AD45, by any of the following methods:

—Federal rulemaking portal: <http://www.regulations.gov> Follow the instructions for submitting comments.

—E-mail NPS at [ever\\_superintendent@nps.gov](mailto:ever_superintendent@nps.gov). Use RIN 1024-AD45 in the subject line.

—Mail or hand delivery to: Superintendent, Everglades National Park, 40001 State Route 9336, Homestead, FL 33034-6733.

—Fax to: (305) 242-7711.

—For additional information see "Public Participation" under

**SUPPLEMENTARY INFORMATION** below.

—Written or oral comments will also be accepted during a public meeting to be held during the 60 day comment period. Date and location of the meeting will be determined at a later date and will be announced through local press releases and the park's Web site at <http://www.nps.gov/dрто>.

**FOR FURTHER INFORMATION CONTACT:** Jerry Case, Regulations Program Manager,

National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208-4206. E-mail: [jerry\\_case@nps.gov](mailto:jerry_case@nps.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The National Park Service (NPS) is proposing to establish special regulations for Dry Tortugas National Park. The current regulations at 36 CFR 7.27 were established for Fort Jefferson National Monument, the predecessor to Dry Tortugas National Park. Fort Jefferson National Monument was established by Presidential Proclamation No. 2112 in 1935 for the purpose of preserving the Dry Tortugas group of islands within the original 1845 Federal military reservation of islands, keys and banks. In 1980, Congress legislatively affirmed the Fort Jefferson National Monument.

In 1992, Congress enacted Public Law 102-525 (16 U.S.C. 410xx *et seq.*) abolishing the Fort Jefferson National Monument and establishing Dry Tortugas National Park in its place. Congress established the park "to preserve and protect for the education, inspiration and enjoyment of present and future generations nationally significant natural, historic, scenic, marine, and scientific values in South Florida." In addition, Congress directed the Secretary of the Interior to manage the park for the following specific purposes, among others:

(1) To protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.

(2) To protect populations of fish and wildlife, including (but not limited to) loggerhead and green sea turtles, sooty terns, frigate birds, and numerous migratory bird species.

(3) To protect the pristine natural environment of the Dry Tortugas group of islands.

(4) To protect, stabilize, restore and interpret Fort Jefferson, an outstanding example of nineteenth century masonry fortification.

(5) To preserve and protect submerged cultural resources.

(6) In a manner consistent with paragraphs (1) through (5) to provide opportunities for scientific research. 16 U.S.C. 410xx-1(b).

The NPS developed the FGMPA/EIS, approved through a Record of Decision in July 2001, to comply with its statutory mandate to manage and protect Dry Tortugas National Park, and to respond to pressures from increased visitation and over-utilization of park resources.

As described more fully in the FGMPA/EIS, despite the park's remote

location approximately 70 miles west of Key West, Florida, there are indications that rapidly increasing visitor use is negatively impacting the resources and values that make Dry Tortugas National Park unique. Visitation to Dry Tortugas National Park increased 400% from 1994 through 2000, from 23,000 to 95,000 annual visitors. The resources and infrastructure at the park cannot sustain an uncontrolled growth rate of this magnitude while ensuring protection of park resources consistent with the park's legislative mandate.

Scientific studies have documented significant declines in the size and abundance of commercially and recreationally important species of fish, particularly snapper, grouper, and grunts in Dry Tortugas National Park. These declines threaten the sustainability of reef fish communities both within the park and throughout the Florida Keys. Studies demonstrate that both the size and abundance of fish in the Tortugas area, including Dry Tortugas National Park, are essential to spawning and recruitment for regional fish stocks and the multi-billion dollar fishing and tourism industry in the Florida Keys.

The population of south Florida is projected to increase from its current level of 6.3 million people to more than 12 million by 2050. With continued technological innovations such as global positioning systems and bigger, faster vessels, the increase in population and recreational tourism will likely result in more pressure on the resources in the Dry Tortugas. In recent years, interest has grown in the commercial sector to provide increased transportation to the park and to conduct additional activities in the park, which would bring many more visitors and greater impacts to the park.

To address these issues, planning was started in 1998 to update the 1983 Fort Jefferson National Monument General Management Plan. Concerned that park resources would suffer as a result of increased use, park managers placed a moratorium on the authorization of new commercial activity in the park until a FGMPA/EIS could be completed and implemented.

The FGMPA/EIS addressed specific issues including (1) The protection of near-pristine resources such as coral reefs and sea grasses (2) the conservation of fisheries and the protection of submerged cultural resources (3) the management direction of commercial services; and (4) the determination of appropriate levels and types of visitor use.

After extensive public involvement and collaboration with State and

Federal agencies, the NPS selected a management alternative that will afford a high level of protection to park resources as well as provide for appropriate types and levels of high quality visitor experiences. This will be accomplished by establishing management zones and visitor carrying capacity limits for specific locations in the park, using commercial services to direct and structure visitor use, and instituting a permit system for private as well as commercial boats in the RNA. A range of recreational and educational opportunities will be available for visitors as long as appropriate resource conditions are maintained. The quality of visitor experiences will be enhanced by maintaining the quality of resources while expanding visitor access throughout the park.

The selected management action establishes zones that provide guidance for managing specific areas for desired resource conditions and visitor experiences. These zones are set forth in the FGMPA/EIS and Record of Decision approved on July 27, 2001. Most of the provisions in this proposed rulemaking are not associated with specific management zones but are applicable throughout the park. The exceptions are the provisions pertaining specifically to the RNA and Special Protection Zones. A brief description of these zones will follow.

#### *Natural/Cultural Zone*

This zone will provide visitors opportunities to experience the remoteness and natural character of the area. Opportunities for challenge and adventure will be high, compared to other zones. Facilities will generally not be appropriate. Boaters will need to be self-reliant. Appropriate activities will include snorkeling, scuba diving, swimming, boating, wildlife viewing, and recreational fishing. Anchoring will be permitted, however the use of mooring buoys may be required in certain areas if protection of sensitive resources warrants restricting anchors.

#### *Historic Preservation/Adaptive Use Zone*

This zone will provide interpretive, educational and recreational opportunities in order to convey to visitors the rich architectural and cultural history and natural resources of Garden Key and Fort Jefferson. Appropriate visitor activities will include tours, bird-watching, photography, swimming, snorkeling, scuba diving, camping, boating and recreational fishing. The management focus in this zone will be on maintaining and protecting historic and

natural resources, mitigating impacts of human use, maintaining visitor facilities and providing for quality visitor experiences.

#### *Special Protection Zone*

This management zone will provide added protection for certain sensitive and exceptional resources. It will be used at times and in places throughout the park where sensitive wildlife or cultural resources are vulnerable to human disturbance, such as areas where sea turtles and seabirds are nesting or hatching. The superintendent will establish these zones when necessary to avoid unacceptable human impacts to these important resources. In such cases, only research activities will be allowed so long as such research activities do not impact these important resources. The public will be notified of any restrictions through one or more of the methods listed in § 1.7 of this chapter.

#### *Research Natural Area*

The RNA contains prime examples of natural resources, processes, and ecosystems including significant genetic resources, which have particular value for long-term observational studies. The RNA is managed to provide the greatest possible protection of resources. Recreational fishing and consumptive activities will not be allowed. Boaters will be required to use mooring buoys, and anchoring will be prohibited. Research activities in RNAs generally are restricted to non-manipulative research. Education and other activities that will not detract from an area's research values will be allowed. The RNA complements the adjacent 151 square nautical mile Tortugas Ecological Reserve in the waters of the Florida Keys National Marine Sanctuary, which has goals and regulations consistent with those of the RNA, including similar constraints on fishing.

Scientific studies have found that Dry Tortugas National Park and the Tortugas region play a critical role in the function and dynamics of the larger Florida Keys coral reef ecosystem. The Tortugas includes spawning and nursery grounds for numerous fish. Larvae spawned from adult populations are spread by a persistent system of currents and eddies throughout the Florida Keys and up the Southeast coast which should help replenish depleted fish populations.

Recent scientific studies of reef fisheries in Dry Tortugas National Park have also documented significant declines in the size and abundance of fish. As such, additional fishery management practices should be considered to enable the National Park

Service to meet its statutory obligations under the National Park Service Organic Act (16 U.S.C. 1–4) and the requirement under Public Law 102–525 (16 U.S.C. 410xx *et seq.*) to “protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.”

The RNA is a useful management tool to protect this pristine area as well as provide sanctuaries for species that have been substantially impacted by harvesting or habitat reduction, and to provide time for altered systems to recover. The RNA complements the adjacent Tortugas Ecological Reserve in the waters of the Florida Keys National Marine Sanctuary, with consistent goals and constraints on fishing. In order for the RNA and the Ecological Reserve to be biologically effective, the full range of land and marine habitats and their associated communities must be included in these areas. The National Marine Sanctuary's Tortugas Ecological Reserve, with its deep reefs and habitats, provides spawning areas for recreationally and commercially important fish while the National Park's RNA, with its shallow reefs and sea grass beds, provides nurseries and food for these fish and a multitude of other marine species. The rationale and benefits from establishment of the RNA are explained in greater detail in the ROD for the FGMPA/EIS.

The proposed regulations pertaining to the RNA are intended to protect, restore, and enhance the living resources of the Park; contribute to the maintenance of natural assemblages of living resources for future generations; provide places for species dependent on such living resources to survive and propagate; achieve the objective of resource protection while facilitating uses not prohibited by other authorities; reduce conflicts between such compatible uses; and achieve the purposes of Public Law 102–525 (16 U.S.C. 410xx *et seq.*) and the National Park Service Organic Act (16 U.S.C. 1–4) of 1916.

The RNA also responds to the National Park Service's statutory authority (16 U.S.C. 5935) to provide opportunities for scientific research. The RNA and the larger Tortugas Ecological Reserve constitute a rare opportunity to cooperatively advance the science of marine ecology and marine resource management through direct observation of how resources within these areas respond to protection. Application of the research results in Park management programs will implement statutory direction to assure that resource management is enhanced by utilization of a broad

program of the highest quality science and information (16 U.S.C. 5932).

By designating the Research Natural Area, the National Park Service hopes to realize the area's full potential and offer outstanding opportunities for scientific research, visitor education and appreciation of an intact marine ecosystem. These goals are consistent with the objectives of Executive Order 13089 on Coral Reef Protection, Executive Order 13151 on Marine Protected Areas, the U.S. Coral Reef Task Force's March 2000 National Action Plan To Conserve Coral Reefs, and the 2004 U.S. Ocean Action Plan.

### Section-by-Section Analysis

#### *(a) What terms do I need to know?*

In order to provide clarity and reduce possible confusion, fifteen definitions have been included in this paragraph. They include: Baitfish, cast net, designated anchorage, dip net, finfish, flat wake, guide fishing, live rock, lobster, marine life, not available for immediate use, ornamental tropical fish, permits, research natural area, and shrimp. Common fish names referred to in the regulations are further clarified by including scientific names.

#### *(b) Are there recreational fishing restrictions that I need to know?*

Section 2.3(a) of this chapter adopts non-conflicting state fishing laws as part of the general NPS regulations applicable to all units of the National Park System unless regulations for particular park areas specify otherwise. For Dry Tortugas National Park, we are proposing additional requirements relating to fishing to achieve the park's purposes and implement planning decisions. Recreational fishing activities must comply with the state regulations unless those activities are otherwise restricted or prohibited in this section. Any reference to fishing in § 7.27 refers to recreational fishing, which is the taking, attempting to take, or possessing of fish for personal use. This is the same definition used by the State of Florida. All references to commercial fishing have been removed since this activity is already prohibited by 36 CFR 2.3(d)(4).

The intent of paragraph (b)(1) is to allow the superintendent to impose restrictions or closures to protect a fish species within the park. In emergency situations, after consulting with the Florida Fish and Wildlife Conservation Commission, the superintendent may impose closures and establish conditions or restrictions necessary pertaining to fishing, including but not limited to species of fish that may be taken, seasons and hours during which

fishing may take place, methods of taking, and size, bag and possession limits. In emergency situations where consultation in advance is not possible, the superintendent will consult within 24-hours of the initiation of closures or restrictions. Such emergency closures or restrictions are temporary in nature and may be for up to a 30-day period which may be extended once for up to an additional 30-day period by the superintendent. In other situations pertaining to fishing (i.e., non-emergency situations or the extension of emergency closures or restrictions beyond these two emergency periods), the superintendent shall consult with and obtain the concurrence of the Florida Fish and Wildlife Conservation Commission prior to acting. This provision of such closures and restrictions is in furtherance of the park's enabling legislation, which identifies protection of fish and wildlife as a purpose of its establishment.

Paragraph (b)(2) identifies which fish can be taken and the legal methods for taking these fish. Fishing is limited to fin fish caught by a closely attended hook-and-line, bait fish caught by hook-and-line, cast nets or dip nets, and shrimp caught by dip nets or cast nets. These restrictions are not new. For the last 10 years, they have been enforced through the Superintendent's Compendium, which serves as a local management guide authorized by 36 CFR 1.5. Including these restrictions in this proposed regulation increases public awareness of their applicability. The previous restriction in 36 CFR 7.27(a)(5)(i), that limits cast nets to 12 feet in diameter, has been removed. There appears to be no compelling ecological or environmental reason to restrict the size of the cast nets. This proposed change would bring the park's regulations into conformity with state regulations.

Paragraph (b)(3) identifies areas that are closed to fishing, including the RNA set forth in the 2001 ROD. Note, however, that paragraph (b)(3)(i) includes provisions that allow vessels to transit the RNA with legally harvested fish and fishing gear onboard. The provisions of paragraph (b)(3) are similar to the regulations applicable to the adjacent Tortugas Ecological Reserve within the Florida Keys National Marine Sanctuary (19 CFR 922.164; Florida Administrative Code 68B-6.003). The other closed areas are the waters inside the Garden Key moat and those within the designated swimming and snorkeling area. Fishing in these areas has been found to be incompatible with the identified visitor activities of boating, swimming and snorkeling, and

for safety reasons in the helicopter-landing zone.

Paragraph (b)(4) identifies specific prohibitions on fishing within the park. This paragraph lists certain fishing practices that differ from state of Florida regulations because they are incompatible with the goals and management direction of the Park.

Paragraph (b)(4)(i) provides for complete protection of lobster within the park. All existing regulations found in 36 CFR 7.27 (a)(2) related to recreational fishing catch limits for lobster have been deleted. Prohibiting individuals from being in the water, when they have lobster onboard their vessel will further enhance the protection of park resources. This "prima facie" (at first view) evidence of violation is similar to the state of Florida regulations for the Biscayne Bay/Card Sound Spiny Lobster Sanctuary (FAC 68B-11.004), and for John Pennecamp Coral Reef State Park (FAC 68B-24.005). In Dry Tortugas National Park, the harvesting of lobster has been previously prohibited through the use of the superintendent's authority to regulate public use under 36 CFR 1.5. This prohibition was based on data collected by NPS biologists in a 1975 study, which indicated that legal harvesting was removing almost 90% of the lobster within the park. The Gulf of Mexico Fishery Management Council concurred with this finding and recommended that the park be established as a sanctuary for lobster to assist in maintaining a population for dispersal to areas outside the park.

The proposed regulations in paragraph (b)(4)(ii), concerning possession and use of spearguns and other weapons are similar to regulations for the ecological reserves and sanctuary preservation areas found within the Florida Keys National Marine Sanctuary (15 CFR 922.164). The state of Florida has similar regulations restricting spearfishing activities found in FS 370.172. This proposed regulation expands on the current regulation, 36 CFR 7.27(a)(7), to include guns, bows and other similarly powered weapons. Paragraph (b)(4)(iii) recognizes that a gaff is a common fishing device used to retrieve legally taken fish from the water, while identifying other prohibited fishing devices.

Although all natural resources within a national park area are protected from removal, disturbance, injury, or destruction by the general regulations found in 36 CFR 2.1, the provision at paragraph (b)(4)(iv) clarifies that ornamental tropical fish as well as all other forms of marine life within Dry Tortugas National Park are specifically

protected. This additional level of protection will help achieve the congressional direction to protect a pristine subtropical marine ecosystem, including an intact coral reef community.

The intent of (b)(4)(v) is to protect coral and other submerged resources from damage or injury by prohibiting the dragging or trawling of nets that are otherwise allowed to be used in the park.

Paragraph (b)(4)(vi) prohibits the use of nets, other than dip or cast nets. The state of Florida general recreational fishing regulations allow other nets (bully nets, frame and push nets, beach or haul seines) which are inappropriate and harmful to various submerged resources in the park.

Current regulations pertaining to sea turtles and conch found in 36 CFR 7.27(a)(1) and (3) have been removed as unnecessary. The state of Florida has prohibited the taking of conch since 1985 and the general NPS regulations already adopt all non-conflicting state laws. Also, 36 CFR 7.27 (b)(4)(iv) will prohibit the taking of any ornamental tropical fish or other marine life. Because all sea turtles are currently listed as endangered or threatened species under the Endangered Species Act (16 U.S.C. 1538), it is unnecessary to duplicate prohibitions on their taking in these proposed regulations.

Consistent with 36 CFR 5.3, paragraph (b)(5) requires that all fee-for-service guides (including guides for fishing and diving) obtain a permit or other NPS approved commercial use authorization. This permit system allows the park to better manage the fisheries and other park resources. The superintendent may limit the number of permitted guides within the park in order to conserve park resources and enhance the visitor experience.

*(c) Are there any areas of the park closed to the public?*

Yes. Paragraph (c) identifies areas that will be closed to public access. The Long/Bush Keys coral patch has been identified by biologists as “fused” staghorn (*Acropora prolifera*), a very rare hybrid of staghorn and elkhorn corals. This coral patch is threatened by a disease that is devastating staghorn and elkhorn coral in Biscayne National Park and the Florida Keys National Marine Sanctuary. Hospital and Long Keys have been closed for the last 10 years pursuant to the Superintendent’s Compendium authority under 36 CFR 1.5. The largest remaining breeding colony of frigate birds in the United States lives on Long Key. The threatened masked booby and other sea

birds live and breed on Hospital Key. Seasonal closures of Bush Key, East Key, and portions of Loggerhead Key for turtle and bird nesting will continue to be designated through the Superintendent’s Compendium. See 36 CFR 1.5, 1.7.

*(d) Is Loggerhead Key open to the public?*

Loggerhead Key will be open to the public subject to closures in certain areas and restrictions on certain activities. Loggerhead Key is the largest key in the park and contains an operating 150-foot lighthouse and other structures. Most of the island falls within the RNA; however, the center portion, containing the lighthouse and the other structures, falls within a historic preservation/adaptive use zone. Paragraph (d) is consistent with the GMPA’s decision to manage access and recreational activities on Loggerhead Key. To protect the natural and cultural resources of the island, as well as providing appropriate visitor experiences, the superintendent may impose terms and conditions on activities as necessary. The public will be notified of any such requirements through one or more of the methods listed in § 1.7 of this chapter. Such terms and conditions include, but are not limited to: docking, hiking restrictions, beach and swimming access, and other restrictions or closures necessary to conserve the natural and cultural resources of the island.

*(e) Are there restrictions that apply to anchoring a vessel in the park?*

Paragraph (e) addresses anchoring locations in general and anchoring prohibitions in the RNA. In the past, boaters have commonly anchored in sea grass beds and rubble bottom, which has resulted in unacceptable impacts to park resources. By restricting anchoring to authorized locations and prohibiting anchoring in all other areas, except in emergencies, degradation to coral reefs and seagrass meadows will be significantly reduced. Paragraph (e)(1) requires vessels to use mooring buoys. The RNA requires a higher level of protection of the marine ecosystem; thus the use of anchors in this area is prohibited.

Paragraph (e)(2) specifies where vessels can anchor. The “designated anchorage” identified in the existing 36 CFR 7.27(b) is also revised to reflect the GMPA’s management zone which calls for limiting anchorage of vessels from sunset to sunrise to the historic preservation/adaptive use zone around Garden Key. This “designated anchorage” is any sand or rubble bottom

within one nautical mile of the Fort Jefferson Harbor Light. This area has been identified as the designated anchorage through the use of the Superintendent’s Compendium for the previous 10 years.

Paragraph (e)(4) imposes restrictions on anchoring by commercial fishing and shrimping vessels consistent with U.S. Coast Guard regulations found in 33 CFR 110.190.

*(f) What vessel operations are prohibited?*

This paragraph addresses several issues of unsafe or otherwise prohibited vessel operations. The Fort Jefferson moat is closed to vessels to preserve and protect the historic scene and prevent damage to the structures. Vessel use in the moat could damage the walls of the fort and the integrity of the moat wall. Because of the large volume of vessel traffic in and around the Garden Key and Bird Key harbors, vessels are required to operate at a flat wake speed to prevent injury and damage resulting from boat wakes.

*(g) What are the regulations regarding the discharge of materials in park waters?*

Paragraph (g) provides for greater protection of the water quality within the park by generally prohibiting the discharge or deposit of any material or substance in park waters. The NPS wishes to maintain the highest possible water quality, free of bacterial and chemical contamination, for health and safety reasons as well as to maintain the park’s environment. The NPS recognizes that certain discharges from vessels, such as bilge water, gray water and engine exhaust cannot be contained and some natural substances, such as fish parts, would have minimal impact on the water quality and therefore, would be allowed. These proposed regulations are similar to the regulations found in the Florida Keys National Marine Sanctuary (15 CFR 922.163). To address future issues regarding the discharge of materials or substances in park waters, the superintendent may impose further restrictions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7 of this chapter.

*(h) What are the permit requirements in the park?*

Paragraph (h) requires that individuals obtain a permit from the superintendent in order to take part in any recreational activity occurring from a vessel within the park. By definition, permits may be issued in writing or be

provided by oral (radio or telephone) authorization. Permitted activities may include anchoring, fishing, snorkeling, diving, wildlife viewing, photography, and the use of mooring buoys. In the RNA, no permits will be issued for anchoring or fishing as these are prohibited activities. Transiting the park by vessel without stopping to engage in research or recreational activities in the park shall not require a permit. All research conducted in the park also requires a permit. In the RNA, permits will only be issued for non-manipulative research (i.e., that which does not alter the existing condition).

*(i) How are coral and other underwater features protected in the park?*

The coral formations within the park are internationally recognized as unique and significant. Public Law 102–525 establishing the park requires protection of the “pristine subtropical marine ecosystems, including an intact coral reef community.” Accordingly, this rule proposes new provisions for the protection of corals. Significant damage to coral can be caused by divers or snorkelers handling or standing on coral, especially in areas of heavy use. The NPS hopes to mitigate this damage by specifically prohibiting these actions, thereby resulting in persons being responsible for any damage that occurs to the coral through contact with their body or their equipment, such as fins, SCUBA tanks, gauges, or cameras. Language is also included to prohibit taking or removing corals and live rock. These provisions are similar to special regulations in the adjacent Florida Keys National Marine Sanctuary (15 CFR 922.163). Coral damage caused by vessels is often attributed to carelessness of vessel operators but can be avoided through more careful vessel operation. This proposed rule would make vessel operators responsible for preventing damage to corals by their vessels. This provision is similar to regulations in the adjacent Florida Keys National Marine Sanctuary (15 CFR 922.163).

Paragraph (i)(3) would result in vessel operator responsibility for any damage to coral, seagrass, or any other underwater feature caused by their anchors or anchor parts. This is to prevent damage to fragile resources and assure the highest level of resource protection.

*(j) What restrictions do I need to know when on or near shipwrecks found in the park?*

Paragraph (j) provides specific protection for wrecked or abandoned craft and their cargo. Dry Tortugas

National Park possesses one of the greatest concentrations of historically significant shipwrecks in North America, with some dating back to the 1600’s. Within the park boundary, there have been more than 275 historically documented maritime casualties (shipwrecks, groundings, strandings), and human activity has left a significant material record. Protection of submerged cultural resources is a park priority, as well as a management purpose identified in Public Law 102–525 (16 U.S.C. 410xx *et seq.*). Consistent with the park’s statutory mandate, these regulations would provide specific protection for these cultural resources in addition to protections provided by regulations in 36 CFR 2.1, the Antiquities Act (16 U.S.C. 431–433) and its implementing regulations (43 CFR part 3), the Archeological Resources Protection Act (16 U.S.C. 470aa–mm) and its implementing regulations (43 CFR part 7), the Florida Historical Resources Act of 1997 (F.S. chap 267 rev 1993) and its implementing regulations (Florida Administrative Code 1A–31).

*(k) Can aircraft land in the park?*

Paragraph (k) allows the superintendent to manage aircraft operations by requiring users to obtain a permit to land seaplanes in the park. Seaplanes provide transportation for a significant number of park visitors. The NPS’s general regulation at 36 part CFR 2.17 authorizes the superintendent to designate, through a special regulation, operating/landing locations within the park. It also prohibits aircraft from operating under power within 500 feet of swimming beaches, boat docks or piers unless designated through a special regulation. In order to reach the designated ramp for discharging passengers, seaplanes must taxi within 500 feet of dock areas. This paragraph will specify that a landing or takeoff may not be made within 500 feet of Garden Key or 500 feet of Bush Key (when it is closed for wildlife nesting), but taxiing is allowed when seaplane use is permitted. The existing regulations use a 300-yard limit for approaches, landings and takeoffs. The new limit of 500 feet will also bring these regulations in line with the general aircraft regulations provision of 500 feet.

**Compliance With Other Laws**

*Regulatory Planning and Review (Executive Order 12866)*

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material

way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The NPS has completed the report “Cost-Benefit Analysis: Proposed Regulations Implementing the Final General Management Plan Amendment/Environmental Impact Statement for Dry Tortugas National Park.” (August 15, 2005.) This document may be viewed on the park’s Web site at: <http://www.nps.gov/drto/pphtml/documents.html>.

This conclusion is based on the fact that the proposed regulations would not impose significant impacts on any business. The regulations are based on the FGMPA/EIS or are restatements, clarifications, and definitions of previously established policies and regulations resulting in no change or effects on the economy.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule will not materially affect budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues.

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled “Regulatory Flexibility Threshold Analysis: Proposed Regulations Implementing the Final General Management Plan Amendment/Environmental Impact Statement for Dry Tortugas National Park.” (January 27, 2005). This document may be viewed on the park’s website at: <http://www.nps.gov/drto/pphtml/documents.html>.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### *Unfunded Mandates Reform Act*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

#### *Federalism (Executive Order 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only applies to the use of NPS administered lands and waters. Both the State of Florida and the United States claim title to submerged lands located within the boundaries of the park established by Congress. Rather than addressing this issue through potentially protracted litigation, the State and the Department have entered into the "Management Agreement for Certain Submerged Lands in Monroe County, Florida, Located within Dry Tortugas National Park" approved by the Florida Governor and Cabinet on August 9, 2005 and by the Secretary of the Interior on December 20, 2005. This document may be viewed on the park's Web site at <http://nps.gov/drto/pphtml/documents.html>. The proposed regulations are consistent with the requirements of the Management Agreement. Once final, the regulations shall be reviewed at least every five years, and as appropriate, revised, and reissued, based upon the results of the research program conducted pursuant to the Management Agreement as well as the information contained in the management plan status report prepared by the National Park Service detailing

the status and activities of the implementation of the FGMPA/EIS. Information and data collected regarding the effectiveness and performance of the RNA will also be reviewed and evaluated. Under adaptive management, NPS may consider changes in the RNA, including boundary adjustments and modifications to the protection and conservation management strategies applicable to the RNA.

Consistent with the Management Agreement, the National Park Service will obtain the concurrence of the Board of Trustees of the Internal Improvement Trust Fund regarding that portion of the regulations pertaining to the management of submerged lands within the park. Further, consistent with the Management Agreement, the National Park Service shall submit for review to the Florida Fish and Wildlife Conservation Commission proposed regulations as well as any proposed revisions or amendments thereto.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### *Paperwork Reduction Act*

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83-I is not required.

#### *National Environmental Policy Act*

The Department of the Interior, National Park Service (NPS) has prepared a Final General Management Plan Amendment/Environmental Impact Statement (FGMPA/EIS) for Dry Tortugas National Park, Monroe County, Florida. Five alternatives were evaluated for guiding the management of the park over the next 15 to 20 years. The alternatives incorporate various zoning applications and other management provisions to ensure resource protection and quality visitor experience conditions. The environmental consequences anticipated from implementation of each alternative are addressed in the FGMPA/EIS. Impacts to natural and cultural resources, visitor experience, socioeconomic environment, and park operations/facilities are analyzed. The FGMPA/EIS was prepared in conjunction with planning by the Florida Keys National Marine Sanctuary

(FKNMS or sanctuary), the Florida Fish and Wildlife Conservation Commission (FFWCC) and the Gulf of Mexico Fishery Management Council (GMFMC) to establish a Tortugas Ecological Reserve (TER) in State and Federal waters adjacent to Dry Tortugas National Park. State and Federal approvals for the TER are complete and implementation of the ecological reserve is underway.

After careful consideration of legislative mandates, visitation trends, environmental impacts, relevant scientific studies, and comments from the public and agencies, the National Park Service will implement Alternative C as described in the Final GMPA/EIS issued in January 2001 (with some minor clarifications, as listed in Appendix A, Errata). This alternative best accomplishes the legislated purposes of Dry Tortugas National Park and the statutory mission of the National Park Service to provide long-term protection of park resources and values while allowing for visitor use and enjoyment. It also furthers the objectives of Executive Order 13089, Coral Reef Protection.

The goal of the selected action is to afford a high level of protection to park resources and provide for appropriate types and levels of high quality visitor experiences. This will be accomplished through management zoning, establishing visitor carrying capacity for specific locations in the park, using commercial services to direct and structure visitor use, and instituting a permit system for private boaters. A wide range of recreational and educational opportunities will be available to visitors provided that appropriate resource conditions are maintained. Visitor experiences will be enhanced due to expanded access throughout the park and higher quality resources to enjoy.

Several consultations took place with government agencies during the EIS process, including the Florida Keys National Marine Sanctuary, the Florida Fish and Wildlife Conservation Commission, and the Gulf of Mexico Fishery Management Council. Pursuant to section 7 requirements of the Endangered Species Act, the NPS is consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding potential effects of the proposed regulations on federally listed species.

The NPS Southeast Regional Director signed the Record of Decision (ROD) on July 27, 2001. In reaching a decision, NPS carefully considered the comments and concerns expressed by the public throughout the EIS process. The EIS and



ROD are available online at: <http://www.nps.gov/drto/pphtml/documents.html> or at Everglades National Park, as indicated above under the heading **FOR FURTHER INFORMATION CONTACT**.

The National Park Service has also carefully reviewed available information regarding current environmental conditions at Dry Tortugas National Park and environmental effects of the selected action. Based on this review, the National Park Service has found no significant new circumstances or information relevant to environmental concerns and bearing on the selected action or its impacts. Therefore, the National Park Service has concluded that supplementation of the 2001 Environmental Impact Statement is unnecessary.

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

#### *Clarity of Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example § 7.27, Dry Tortugas National Park.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### **Drafting Information**

The primary authors of this regulation are: Bonnie Foist, Lynda Lancaster, Bob Howard, Bill Wright, Brien Culhane, and Elaine Hall of Everglades National Park, Don Jodrey, Department of the Interior Office of the Solicitor, and Cliff McCreedy, National Park Service, Natural Resource Stewardship and Science and Jerry Case, Regulations Program Manager, NPS, Washington, DC.

#### **Public Participation**

If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand deliver comments to Superintendent, Everglades National Park, 40001 State Route 9336, Homestead, FL 33034-6733 or fax to (305) 242-7711. Comments may also be submitted on the Federal rulemaking portal: <http://www.regulations.gov> Follow the instructions for submitting comments. Please identify comments by: RIN 1024-AD45 or sent by e-mail to [ever\\_superintendent@nps.gov](mailto:ever_superintendent@nps.gov). Use RIN 1024-AD45 in the subject line.

Written or oral comments will also be accepted during a public meeting to be held during the 60-day comment period. Date and location of the meeting will be determined at a later date and will be announced through local press releases and the park's Web site at <http://www.nps.gov/drto>.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

#### **List of Subjects in 36 CFR Part 7**

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

#### **PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM**

1. The authority for part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. § 7.27 is revised to read as follows:

##### **§ 7.27 Dry Tortugas National Park**

(a) *What terms do I need to know?* The following terms apply to this section only:

*Baitfish* means: ballyhoo (family Exocoetidae and genus Hemiramphus), other genus may be included in this family; minnow (families Cyprinodontidae, Peciliidae, or Atherinidae); mojarra (family Gerreidae); mullet (family Mugilidae); pilchard (family Clupeidae); pinfish (family Sparidae, genus Lagodon).

*Cast net* means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand, measuring 14 feet or less stretched length (stretched length is defined as the distance from the horn at the center of the net with the net gathered and pulled taut, to the lead line).

*Designated anchorage* means any area of sand or rubble bottom within one nautical mile of the Fort Jefferson Harbor Light.

*Dip net* means a hand held device for obtaining bait, the netting of which is fastened in a frame. A dip net may not exceed three (3) feet at its widest point.

*Finfish* means a member of subclasses Agnatha, Chondrichthyes, or Osteichthyes.

*Flat wake speed* means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per hour.

*Guide operations* means the activity, of a person, partnership, firm, corporation, or other entity to provide services for hire to visitors of the park. This includes but is not limited to fishing, diving, snorkeling, and wildlife viewing.

*Live rock* means any living marine organism or assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells.

*Lobster* means Shovel-nosed or Spanish Lobster (Scyllarides aequinoctialis), Slipper lobster (Parribacus antarcticus), Caribbean spiny lobster (Panulirus argus), or spotted spiny lobster (Panulirus guttatus).

*Marine life* means sponges, sea anenomes, corals, jellyfish, sea



cucumbers, starfish, sea urchins, octopus, crabs, shrimp, barnacles, worms, conch, and other animals belonging to the Phyla Porifera, Cnidaria, Echinodermata, Mollusca, Bryozoa, Brachiopoda, rthropoda, Platyhilmenthes, and Annelida.

*Not available for immediate use* means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker or similar storage area, or being securely covered and lashed to a deck or bulkhead, or in a rod holder with hooks and lures removed.

*Ornamental tropical fish* usually means a brightly colored fish, often used for aquarium purposes and which lives in close relationship to coral communities, belonging to the families Syngathidae, Apogonidae, Pomacentridae, Scaridae, Blennidae, Callionymidae, Gobiidae, Ostraciidae, or Diodontidae.

*Permit, in the case of 36 CFR Part 7.27*, means an authorization in writing or orally (e.g., via radio or telephonically).

*Research Natural Area (RNA)* at Dry Tortugas means the 46-square-statute-mile area in the northwest portion of the park enclosed by connecting with straight lines the adjacent points of 82°51' W and 24°36' N, and 82°58' W and 24°36' N west to the park boundary, but excluding: (1) The approximately 3-square nautical mile adaptive use zone designated by the superintendent with notice to the public through one or more methods listed in § 1.7 of this chapter; (2) the designated anchorage; (3) Garden Key, Bush Key and Long Key; or (4) the central portion of Loggerhead key including the lighthouse and associated buildings.

*Shrimp* means a member of the genus Farfantepenaeus, Penaeus sp.

(b) *Are there recreational fishing restrictions that I need to know?* (1) After consulting with and obtaining the concurrence of the Florida Fish and Wildlife Conservation Commission, based on management objectives and the park fisheries research, the superintendent may impose closures and establish conditions or restrictions necessary pertaining to fishing, including but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, bag and possession limits. The public will be notified of any changes through one or more methods listed in § 1.7 of this chapter. In emergency situations, after consulting with the Florida Fish and Wildlife Conservation Commission, the superintendent may impose temporary closures and establish conditions or

restrictions necessary, but not exceeding 30 days in duration which may be extended for one additional 30 day period, pertaining to fishing, including but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, bag and possession limits. In emergency situations where consultation in advance is not possible, the superintendent will consult with the Florida Fish and Wildlife Conservation Commission within 24-hours of the initiation of the temporary closure or restriction.

(2) Only the following may be legally taken from Dry Tortugas National Park:

(i) Fin fish by closely attended hook-and-line;

(ii) Baitfish by closely attended hook and line, dip net, or cast net and limited to 5 gallons per vessel per day;

(iii) Shrimp may be taken by dip net or cast net.

(3) The following waters and areas are closed to fishing:

(i) The Research Natural Area (RNA). Fish and fishing gear may be possessed aboard a vessel in the RNA, provided such fish can be shown not to have been harvested from within, removed from, or taken within, the RNA as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through the RNA, provided further that such vessel is in continuous transit through the RNA. Gear capable of harvesting fish may be aboard a vessel in the RNA, provided such gear is not available for immediate use when entering and during transit through the RNA and no presumption of fishing activity shall be drawn therefrom.

(ii) Garden Key moat;

(iii) Within any swimming and snorkeling areas designated by buoys;

(iv) Within 50 feet of the historic coaling docks;

(v) Helipad areas, including the gasoline refueling dock.

(4) The following are prohibited:

(i) The possession of lobster within the boundaries of the park; unless the individual took the lobster outside park waters and has the proper State/Federal licenses and permits. Vessels with legally taken lobster aboard which was taken outside the park may not have persons overboard in park waters. The presence of lobster aboard a vessel in park waters, while one or more persons from such vessel are overboard, shall constitute prima facie evidence that such lobsters were harvested from park waters in violation of this chapter.

(ii) The taking of fish by pole spear, Hawaiian sling, rubber powered, pneumatic, or spring loaded gun or

similar device known as a speargun, air rifles, bows and arrows, powerheads, or explosive powered guns. Operators of vessels within the park must break down and store all described weapons so such gear is not available for immediate use.

(iii) The use of a hand held hook, gig, gaff, or snare is prohibited, except that a gaff may be used for landing a fish lawfully caught by hook and line when consistent with all requirements provided herein including size and species restrictions.

(iv) The taking, possession or touching of any ornamental tropical fish or marine life except as expressly provided in this section.

(v) Dragging or trawling a dip net or cast net.

(vi) The use of nets except as provided in (b)(2)(ii) and (iii).

(5) Engaging in guide operations (fee for service), including but not limited to fishing and diving, except in accordance with the provisions of a permit, contract, or other commercial use authorization, or other written agreement with the United States and administered under this chapter is prohibited.

(c) *Are there any areas of the park closed to the public?* Yes. The following areas are closed to the public:

(1) The elkhorn (*Acropora palmata*) and staghorn (*Acropora prolifera*) patches adjacent to and including the tidal channel southeast of Long and Bush Keys and extending to 100 yards from the exterior edge of either patch.

(2) Hospital and Long Keys.

(3) Areas designated by the superintendent in accordance with § 1.5 and noticed to the public through one or more of the methods listed in § 1.7 of this chapter.

(d) *Is Loggerhead Key open to the public?* The superintendent shall designate areas on Loggerhead Key as closed for public use, establish closures or restrictions on and around the waters of Loggerhead Key, and establish conditions for docking, swimming or wading, and hiking as necessary to protect park resources, visitors, or employees. The public will be notified of any such designations, closures or restrictions through one or more methods listed in § 1.7 of this chapter.

(e) *Are there restrictions that apply to anchoring a vessel in the park?* (1) Anchoring in the Research Natural Area (RNA) is prohibited.

(2) All vessels in the RNA must use designated mooring buoys.

(3) Anchoring between sunset and sunrise is limited to the designated anchorage area at Garden Key.

(4) Except in cases of emergency involving danger to life or property, no vessel engaged in commercial fishing or shrimping shall anchor in any of the channels, harbors or lagoons in the vicinity of Garden Key, Bush Key, or the surrounding shoals outside of Bird Key Harbor. Emergencies may include, but are not limited to, adverse weather conditions, mechanical failure, medical emergencies or other public safety situations.

(f) *What vessel operations are prohibited?* The following vessel operations are prohibited:

(1) Operating a vessel in the Fort Jefferson Moat;

(2) Operating a vessel above a flat wake speed in the Garden Key and Bird Key Harbor areas.

(g) *What are the regulations regarding the discharge of materials in park waters?* (1) The discharge or deposit of materials or substances of any kind within the boundaries of the park is prohibited, except for the following:

- (i) Fish, fish parts, chumming material, or bait used or produced incidental to and while conducting recreational fishing activities;
- (ii) Graywater from sinks, consisting of only water and food particles;
- (iii) Vessel cooling water, engine exhaust, or bilge water when not contaminated by oil or other substances.

(2) The superintendent may impose further restrictions as necessary to protect park resources, visitors, or employees. The public will be notified of any such requirements through one or more methods listed in § 1.7 of this chapter.

(h) *What are the permit requirements in the park?* (1) A permit, issued by the superintendent, is required for all non-commercial vessels for which occupants are engaged in recreational activities, including all activities in the RNA. Permitted recreational activities include but are not limited to use of mooring buoys, snorkeling, diving, wildlife viewing, and photography.

(2) A permit, issued by the superintendent, is required for a person, group, institution, or organization conducting research activities in the park.

(3) Vessels transiting the park without interruption shall not require a permit.

(i) *How are corals and other underwater natural features protected in the park?* (1) Taking, possessing, removing, damaging, touching, handling, harvesting, disturbing, standing on, or otherwise injuring coral, coral formation, seagrass or other living or dead organisms, including marine invertebrates, live rock, and shells, is prohibited.

(2) Vessel operators are prohibited from allowing their vessel to strike, injure, or damage coral, seagrass, or any other immobile organism attached to the seabed.

(3) Vessel operators are prohibited from allowing an anchor, chain, rope or other mooring device to be cast, dragged, or placed so as to strike, break, abrade, or otherwise cause damage to coral formations, sea grass, or submerged cultural resources.

(j) *What restrictions do I need to know when on or near shipwrecks found in the park?* No person may destroy, molest, remove, deface, displace, or tamper with wrecked or abandoned vessels of any type or condition, or any cargo pertaining thereto; and, the survey, inventory, dismantling, or recovery of any such wreck or cargo within the boundaries of the park is prohibited unless permitted in writing by the superintendent.

(k) *How are aircraft operations restricted in the park?* (1) Landing an aircraft in Dry Tortugas National Park may occur only in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

(2) When landing is authorized by permit, the following requirements also apply:

(i) Aircraft may be landed on the waters within a radius of 1 mile of Garden Key, but a landing or takeoff may not be made within 500 feet of Garden Key, or within 500 feet of Bush Key when Bush Key is closed to the public to protect nesting wildlife. The operation of aircraft is also subject to § 2.17, except that seaplanes may be taxied closer than 500 feet to the Garden Dock while enroute to or from the designated ramp, north of the dock.

(ii) Seaplanes may be moored or brought up on land only on the designated beach, north of the Garden Key dock.

**Matthew J. Hogan,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06-3295 Filed 4-6-06; 8:45 am]

**BILLING CODE 4310-70-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[WT Docket No. 96-86; FCC 06-34]

### Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In the *Eighth Notice of Proposed Rulemaking (Eighth NPRM)*, the FCC seeks comment on proposals to create broadband channels in the 700 MHz public safety band. Specifically, the *Eighth NPRM* seeks comment on proposals to accommodate broadband and/or wideband operations on the current wideband spectrum (twelve megahertz) of the current 700 MHz public safety spectrum allocation. This *Eighth NPRM* is another step in the FCC's ongoing efforts to develop a regulatory framework in which to meet current and future public safety communications needs.

**DATES:** Written comments are due on or before June 6, 2006, and reply comments are due on or before July 6, 2006.

**ADDRESSES:** You may submit comments, identified by WT Docket 96-86 and FCC 06-34, by any of the identified methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission Web Site: <http://www.fcc.gov/cgb/ecfs>. Follow the instructions for submitting comments.
- E-mail: [ecfs@fcc.gov](mailto:ecfs@fcc.gov). Include WT Docket No. 96-86 in the subject line of the message.

- Mail: Paper submissions.
- (Hand or Messenger Delivered accepted between 8 a.m. to 7 p.m. only) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, c/o Natek, Inc., Inc., 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- (Commercial overnight mail, EXCEPT United States Postal Service) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743,

- (All other mail, including United States Postal Service Express Mail, Priority Mail, and First Class Mail) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of